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U.S. Environmental Protection Agency
Region IX
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09 FEB 2021
U.S. EPA - REGION IX

Docket No. FIFRA-09-2021-00 24

CONSENT AGREEMENT AND FINAL ORDER

pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

The United States Environmental Protection Agency (“EPA”), Region IX, and Raymat Materials, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment of a civil administrative penalty against Respondent for violations of Sections 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E).

2. Complainant is the Manager of the Toxics Section in the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.

1 3. Respondent is Raymat Materials, Inc., a California corporation with headquarter
2 offices located at 440 Boulder Court, Suite 300, in Pleasanton, California, 94566.

3 B. STATUTORY AND REGULATORY BASIS

4 4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to
5 Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA
6 Administrator govern the importation of pesticides into the United States.

7 5. 19 C.F.R. § 12.111 provides that “[c]ertain imported pesticides are required to be
8 registered under the provisions of section 3 of the Act . . . before being permitted entry into the
9 United States. . . .”

10 6. 19 C.F.R. § 12.112 provides that “[a]n importer or the importer's agent desiring to
11 import pesticides or devices into the United States must submit to the Administrator, prior to the
12 arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices. . . .”

13 7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual,
14 partnership, association, corporation, or any organized group of persons whether incorporated or
15 not.

16 8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent,
17 nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus,
18 bacteria, or other micro-organism (except viruses, bacteria, or other living micro-organisms on or
19 in living man or other living animals) which the Administrator declares to be a pest under
20 Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

21 9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any
22 substance or mixture of substances intended for preventing, destroying, repelling, or mitigating
23 any pest.

24 10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to
25 mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship,
26 deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to
27 deliver.

28 11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be

1 unlawful for any person to distribute or sell to any person a pesticide which is adulterated or
2 misbranded.

3 12. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is
4 misbranded if “the labeling accompanying it does not contain directions for use which are
5 necessary for effecting the purpose for which the product is intended and if complied with,
6 together with any requirements imposed under Section 3(d) of this Act, are adequate to protect
7 health and the environment.”

8 13. The Administrator of EPA may assess a civil penalty against any registrant,
9 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any
10 provision of FIFRA of up to \$20,288 for each offense that occurred after November 2, 2015
11 where penalties are assessed on or after January 13, 2020. See Section 14(a)(1) of FIFRA, 7
12 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at
13 85 Fed. Reg. 1751 (January 13, 2020).

14 C. ALLEGED VIOLATIONS

15 14. At all times relevant to this CAFO, Respondent was a corporation and therefore a
16 “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is
17 subject to FIFRA and the regulations promulgated thereunder.

18 15. On or about September 11, 2018, Respondent submitted to the U.S. Department of
19 Homeland Security, Bureau of Customs and Border Protection (“CBP”) an alternative to the
20 Notice of Arrival through CBP’s Automated Commercial Environment (“ACE”) system under
21 entry number 224-3096503-2 for an import shipment of 40 containers of “Imidacloprid.”

22 16. The NOA stated that Respondent was the importer of record.

23 17. The import shipment associated with entry number 224-3096503-2 entered the
24 United States at the Port of Oakland, California, on or about September 16, 2018.

25 18. As the importer of “Imidacloprid” and by doing business in the United States,
26 Respondent is subject to the requirements of FIFRA and the regulations promulgated thereunder.

27 19. “Imidacloprid” is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. §
28 136(u). The EPA Registration Number for “Imidacloprid.” is 81598-5.

20. On or about September 16, 2018, Respondent “distributed or sold,” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide “Imidacloprid” by importing 40 containers of it into the United States.

21. On or about December 2, 2019, Respondent “distributed or sold,” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide “Imidacloprid” by shipping 18 of the 40 imported containers to Hartz Mountain Corporation, a pet supply company located in Pleasant Plain, Ohio.

22. The labeling on the 40 containers of “Imidacloprid” Respondent imported to the Port of Oakland, California, on or about September 16, 2018, and the 18 containers of “Imidacloprid” Respondent distributed to Hartz Mountain Corporation on or about December 2, 2019, did not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate to protect health and the environment.

23. Consequently, the 40 containers of “Imidacloprid” Respondent imported to the Port of Oakland, California, on or about September 16, 2018, and the 18 containers of “Imidacloprid” Respondent distributed to Hartz Mountain Corporation on or about December 2, 2019, are “misbranded” pesticides pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), and their distributions constitute two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

D. RESPONDENT'S ADMISSIONS

24. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

25. In full and final settlement of the violations specifically alleged in Section I.C of this

1 CAFO, Respondent shall pay a civil administrative penalty of THIRTEEN THOUSAND, SIX
2 HUNDRED, AND NINETEEN DOLLARS (\$13,619). Respondent shall pay this civil penalty
3 within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by
4 remitting a certified or cashier's check, including the name and docket number of this case, for
5 the amount, payable to "Treasurer, United States of America," (or be paid by one of the other
6 methods listed below) and sent as follows:

7
8 Regular Mail:

9 U.S. Environmental Protection Agency
10 Fines and Penalties
11 Cincinnati Finance Center
12 PO Box 979077
13 St. Louis, MO 63197-9000

14 Wire Transfers:

15 Wire transfers must be sent directly to the Federal Reserve Bank in New
16 York City with the following information:
17 Federal Reserve Bank of New York
18 ABA = 021030004
19 Account = 68010727
20 SWIFT address = FRNYUS33
21 33 Liberty Street
22 New York, NY 10045
23 Beneficiary = U.S. Environmental Protection Agency

24 Certified or Overnight Mail:

25 U.S. Bank
26 1005 Convention Plaza
27 Mail Station SL-MO-C2GL
28 ATTN Box 979077
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 31006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to the following regular mail or email addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
R9HearingClerk@epa.gov

Timothy Hyles
Toxics Section
Enforcement and Compliance Assurance Division (ENF-2-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
hyles.timothy@epa.gov

26. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.

27. If Respondent fails to pay the assessed civil administrative penalty of THIRTEEN THOUSAND, SIX HUNDRED, AND NINETEEN DOLLARS (\$13,619), as identified in Paragraph 25, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued stipulated penalties are paid and shall become due and payable upon EPA's written request.

1 Failure to pay the civil administrative penalty specified in Paragraph 25 by the deadline specified
2 in that Paragraph may also lead to any or all of the following actions:

3 (1) EPA may refer the debt to a credit reporting agency, a collection
4 agency, or to the Department of Justice for filing of a collection action in the appropriate United
5 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
6 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
7 collection proceeding.

8 (2) The U.S. Government may collect the debt by administrative offset
9 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
10 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
11 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
12 C.F.R. §§ 13(C) and 13(H).

13 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
14 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
15 business with EPA or engaging in programs EPA sponsors or funds.

16 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
17 Government may assess interest, administrative handling charges, and nonpayment penalties
18 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
19 civil administrative penalty specified in Paragraph 25 by the deadline specified in that Paragraph.

20 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
21 § 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
22 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
23 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
24 (30) days of the effective date of this CAFO.

25 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
26 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
27 based on either actual or average cost incurred (including both direct and indirect costs), for
28 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

1 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
2 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
3 may be assessed on all debts more than ninety (90) days delinquent.

4 F. CERTIFICATION OF COMPLIANCE

5 28. In executing this CAFO, Respondent certifies that the information it has supplied
6 concerning this matter was at the time of submission, and is at the time of signature to this
7 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
8 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading
9 information can result in significant penalties, including the possibility of fines and
10 imprisonment for knowing submission of such information.

11 G. RETENTION OF RIGHTS

12 29. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
13 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
14 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
15 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
16 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
17 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
18 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
19 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

20 30. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
21 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
22 and permits.

23 H. ATTORNEYS' FEES AND COSTS

24 31. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
25 this proceeding.

26 I. EFFECTIVE DATE

27 32. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
28 effective on the date that the Final Order contained in this CAFO, having been approved and

issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

33. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

34. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT RAYMAT MATERIALS, INC.:

1-8-2020

DATE



JIBING LIN

President

Raymat Materials, Inc.

440 Boulder Court, Suite 300

Pleasanton, CA 94566

FOR COMPLAINANT EPA:

1/28/21

DATE

MATTHEW
SALAZAR

Digitally signed by
MATTHEW SALAZAR
Date: 2021.01.28
11:30:15 -08'00'

MATT SALAZAR, P.E.

Manager, Toxics Section

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Raymat Materials, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2021-0024) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of THIRTEEN
5 THOUSAND, SIX HUNDRED, AND NINETEEN DOLLARS (\$13,619) and comply with the
6 terms and conditions set forth in the Consent Agreement.

7
8 STEVEN JAWGIEL Digitally signed by STEVEN JAWGIEL
Date: 2021.02.09 10:22:55 -08'00'

9 _____
10 DATE

11 STEVEN JAWGIEL
12 Regional Judicial Officer
13 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

This is to certify that the original of the fully executed Consent Agreement and Final Order in the matter of Raymat Materials Inc. (**Docket No FIFRA-09-2021-0024**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX., and that a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT:

Jibing Lin
President
Raymat Materials, Inc.
jlin@raymat.com

FOR COMPLAINANT:

Edgar P. Coral
Assistant Regional Counsel
U.S. EPA, Region IX
Coral.Edgar@epa.gov

Date

STEVEN
ARMSEY

Digitally signed by
STEVEN ARMSEY
Date: 2021.02.09
16:02:37 -08'00'

Regional Hearing Clerk
U.S. EPA, Region IX